

Pohle, David

From: Gratz, Jeff
Sent: Monday, August 03, 2015 9:04 AM
To: Montella, Daniel
Cc: Balla, Richard; Pohle, David
Subject: RE: Concerns for the wetlands, Lake Ontario tributary, fish and wildlife all adjoining and partially surrounding the proposed Martville, NY mine Life-of-Mine

Thanks, Dan. Yes, please refer to DECA.

- Jeff

-----Original Message-----

From: Montella, Daniel
Sent: Monday, August 03, 2015 9:01 AM
To: Gratz, Jeff
Cc: Balla, Richard; Pohle, David
Subject: RE: Concerns for the wetlands, Lake Ontario tributary, fish and wildlife all adjoining and partially surrounding the proposed Martville, NY mine Life-of-Mine

It's a stormwater matter and a general complaint that the Corps and DEC are not being responsive to the concerns raised. There's been no direct discharge of fill into regulated waters, just a concern that proper stormwater control measure were not taken when land clearing started. We don't believe the new definition of waters of the US would have a bearing on this situation, even if they were in effect today, since we believe the nearby downgradient wetlands are all currently regulated. We'll send it over the DECA.

- Dan

-----Original Message-----

From: Gratz, Jeff
Sent: Friday, July 31, 2015 5:45 PM
To: Montella, Daniel
Cc: Balla, Richard; Pohle, David
Subject: RE: Concerns for the wetlands, Lake Ontario tributary, fish and wildlife all adjoining and partially surrounding the proposed Martville, NY mine Life-of-Mine

Dan - Did you all have a chance to look into this. I'll need to get back to Judith shortly.

Thanks - Jeff

-----Original Message-----

From: Montella, Daniel
Sent: Monday, July 27, 2015 11:12 AM
To: Gratz, Jeff
Cc: Balla, Richard; Pohle, David
Subject: RE: Concerns for the wetlands, Lake Ontario tributary, fish and wildlife all adjoining and partially surrounding the proposed Martville, NY mine Life-of-Mine

Yes, we also received it as a web inquiry this morning and we are looking into it. This forwarded email has more information in it. All things suggest it's a likely stormwater matter.

- Dan

-----Original Message-----

From: Gratz, Jeff

Sent: Monday, July 27, 2015 10:54 AM

To: Montella, Daniel

Cc: Balla, Richard

Subject: FW: Concerns for the wetlands, Lake Ontario tributary, fish and wildlife all adjoining and partially surrounding the proposed Martville, NY mine Life-of-Mine

Dan - Can you all call up the Corps to find more out about this issue. The Buffalo office has walked this site and can provide insight. It sounds like there's a mine which may or may not be encroaching on wetlands. If not, it may be discharging pollutants into the wetlands, which may be more of a CWRB issue.

-----Original Message-----

>> On Jul 25, 2015, at 9:39 AM, Enck, Judith <Enck.Judith@epa.gov> wrote:

>>

>> Jeff. Plz have someone take a look at this Lake Ontario wetland issue. I am ESP interested in how our new clean water regs applies to this situation. Tx

>>

>> Sent from my iPhone

>>

>> Begin forwarded message:

>>

>> From: "V. Fichera" <vmfichera@gmail.com<mailto:vmfichera@gmail.com>>

>> To: "Sandra Doran" <Sandra_Doran@fws.gov<mailto:Sandra_Doran@fws.gov>>

>> Cc: "Niver, Robyn" <Robyn_Niver@fws.gov<mailto:Robyn_Niver@fws.gov>>, "Enck, Judith" <Enck.Judith@epa.gov<mailto:Enck.Judith@epa.gov>>

>> Subject: Concerns for the wetlands, Lake Ontario tributary, fish and wildlife all adjoining and partially surrounding the proposed Martville, NY mine Life-of-Mine

>>

>> Dear Sandie Doran,

>>

>> As you know, I am very concerned about negative impacts on the protected national wetland, the Lake Ontario tributary which is the Sterling Creek, and the fish and wildlife which have likely already been impacted by, inter alia, runoff fill from the mine operators fall and winter clearing of the land atop the steep slopes to the wetland and the tributary without the use of storm water control measures.

>>

>> In our conversation a few days ago, you indicated that it was your understanding that there are no wetlands on the property. Please review the email below from Ms. Crawford of the USACE which does indeed confirm that there are wetlands at the base of the slope and land to be mined.

>>

>> In other words, there are no wetlands within the proposed Life-of-Mine (LOM) but there are indeed wetlands adjoining the LOM which, I allege, have already been impacted by silt and sedimentation from the runoff of the cleared lands above them. While the fill is not your jurisdiction, the wildlife on the wetlands and the fish in the stream are -- and these wetlands and part of the Sterling Creek and aquifer fall within the property boundaries of the land owned by the operator.

>>

>> Please therefore assess whether there has been any impact on the plants and wildlife of those wetlands and stream from his operation so far, and please assess whether there are any endangered species present on those wetlands which

could in the future be impacted by fill, pollution from petroleum and particulate matter from the mining operation as well.

>>

>> I remain deeply concerned that the USACE representative did not assess impacts on the wetlands but only walked the Life-of-Mine area eighty feet above them. However, the dereliction of duty of the USACE does not mean that NFWS should turn a blind eye to the fish and wildlife of the wetlands and the Sterling Creek on the operator's property and those affected beyond there. You have indicated that you took some steps to communicate with the land owner and operator but that you believe that the USACE is claiming that there are no wetlands in the area.

>>

>> I trust that a re-reading of the email below will dispel the misunderstanding, establish for the NFWS that the USACE does recognize the presence of wetlands right at the base of the slope to be mined, should the DEC issue a permit.

>>

>> Please review once again as well the attached DEC map of the area: the large areas of blue water colors surrounding the proposed Life-of-Mine on two sides can help even the uninitiated to visualize the sensitivity of this area for potential environmental damage from mining by an operator who has already disregarded the very storm water pollution control plan that he submitted to the DEC for that area.

>>

>> I will look forward to hearing from you at your earliest opportunity.

>>

>> Yours truly,

>>

>> Dr. V. M. Fichera (PhD)

>>

>>

>>

>> ----- Forwarded message -----

>> From: Crawford, Margaret A LRB

<Margaret.A.Crawford@usace.army.mil<mailto:Margaret.A.Crawford@usace.army.mil><mailto:Margaret.A.Crawford@usace.army.mil>>

>> Date: Mon, Jun 29, 2015 at 2:39 PM

>> Subject: RE: [EXTERNAL] Clarifications needed: 13181 Sanford Road, Martville NY Army Corps site visit (UNCLASSIFIED)

>> To: "V. Fichera" <vmfichera@gmail.com<mailto:vmfichera@gmail.com><mailto:vmfichera@gmail.com>>

>> Cc: "Robinson, Judy A LRB"

<Judy.A.Robinson@usace.army.mil<mailto:Judy.A.Robinson@usace.army.mil><mailto:Judy.A.Robinson@usace.army.mil>>

>>, "Niver, Robyn" <Robyn_Niver@fws.gov<mailto:Robyn_Niver@fws.gov><mailto:Robyn_Niver@fws.gov>>, Sandra Doran <Sandra_Doran@fws.gov<mailto:Sandra_Doran@fws.gov><mailto:Sandra_Doran@fws.gov>>, "Brown, Bridget LRB"

<Bridget.Brown@usace.army.mil<mailto:Bridget.Brown@usace.army.mil><mailto:Bridget.Brown@usace.army.mil>>, "Crawford, Margaret A LRB"

<Margaret.A.Crawford@usace.army.mil<mailto:Margaret.A.Crawford@usace.army.mil><mailto:Margaret.A.Crawford@usace.army.mil>>

>>

>>

>> Classification: UNCLASSIFIED

>> Caveats: NONE

>>

>> Hi Dr. Fichera,

>> I conducted a site inspection on June 12, 2015, with the applicant, his consultant, members of the NYSDEC Regional Offices, and local representatives. We walked the perimeter of the proposed mine. We found that the wetlands are located outside of the proposed limits of mine. Due to some concerns associated with the grades, the applicant modified the plan to reduce the encroachment into the slopes that go down to the wetland.

>>

>> Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers regulates the discharge of dredged or fill material into waters of the United States, including freshwater wetlands. When there is no discharge of dredged or fill material into the wetland, the Corps has no involvement over the project. The Corps has no authority over buffers to wetlands.

>>

>> If you would like copies of information from the file, you will have to request those through the Freedom of Information Act. Our procedures can be found at: <http://www.usace.army.mil/FOIA.aspx>

>>

>> I hope that this helps to answer your questions.

>>

>> Thank you,

>> Maggie Crawford

>>

>> -----Original Message-----

>> From: V. Fichera [mailto:vmfichera@gmail.com<mailto:vmfichera@gmail.com>]

>> Sent: Wednesday, June 24, 2015 4:57 PM

>> To: Crawford, Margaret A LRB

>> Cc: Robinson, Judy A LRB; Niver, Robyn; Sandra Doran; bridget.brown@asace.army.mil<mailto:bridget.brown@asace.army.mil><mailto:bridget.brown@asace.army.mil>

>> Subject: Re: [EXTERNAL] Clarifications needed: 13181 Sanford Road, Martville NY Army Corps site visit (UNCLASSIFIED)

>>

>> Dear Ms. Crawford:

>>

>> Thank you for your reply.

>>

>> Unfortunately I and the NFWS members I have been in contact with would clearly best benefit from your addressing in writing the issues I have raised. Please cc your response to all of those whose email addresses appear in the header above.

>>

>> I am concerned about the fish aquatic life in the Sterling Creek and the health of its waters, as well as the wildlife which inhabits the woods and trees, including possible bald eagle and Indiana bat nestings. In fact, I am also waiting for a FWS biologist to be assigned to this complaint as I requested as well as well. The concerns about the wetland are concerns which affect the fish and wildlife but also the larger wetland into which the Creek flows at Lake Ontario.

>>

>> Further, the Creek at the location of the mine is adjacent to a major town aquifer. Therefore I am very concerned that the DEC has not addressed any issues concerning the quality of the water which might be affected by pollutants used at the mine, including but not limited to petroleum storage onsite that will not be subject to permitting simply because the applicant promises never to have more than 1100 gallons on site at any one time. Given the fact that the DEC was officially permitting the burial of fill on the slope to what I feel sure from the NFW and DEC maps is a national wetland -- something I alone first identified and which I understand you did address during your onsite visit -- I believe that a warning letter was and is still appropriate. Please confirm its existence and provide me with copies of the letter and all reports in this matter.

>>

>> I would also ask that, if possible, the Federally-protected waters of the Sterling Creek be tested near the site to document any current contamination of the bed, etc. and so that it will be easier to identify additional foreign contaminants down the line. Residents of the area are concerned about the road treatments and possibly synthetic dust treatments that may pollute the water as well as the air pollutants from machinery which will settle onto the waters -- in an area which may become a high risk for a petroleum spill from the mining traffic and the fueling activities.

>>

>> From the many errors of fact, contradictions, and omissions in the applicant's moving papers submitted for the mining permit through the SEQR process, I believe that it is also important to document the current state of affairs with respect to water quality and the possible presence of endangered species onsite.. The applicant represented in the EAF and the Mined Land Use Plan that the entire site was wooded with the exception of two acres, promising to exercise storm water control practices, etc. -- knowing full well all along that about ten acres of the archaeologically sensitive site had already been cleared. The logging occurred in two phases last year, once in the summer and once around September 2014, as the applicant admitted to me yesterday evening in conversation. Thus it is not clear that the habitat of, for example, the Indiana bat was not endangered, because of the timing of the clear-cutting.

>>

>> Given all of the problematic facts and circumstances of this permit application, I do not feel comfortable "trusting" that the measures instituted by the DEC will adequately protect the wetland and the Sterling Creek and therefore I am most eager to have the Army Corps and/or the FWS at least document the current status quo -- because, sadly, it is actually possible that your visit was too late to save parts of the wetland from fill according to the likely scenario I described. The manner in which your visit was characterize was, I hope, contrary to the facts of the situation -- I await enlightenment thereon.

>>

>> I will look forward to reading your response which will also help inform my further contact with NFWS, as well. I am aware that there are jurisdictional requirements that must be met; I am asking you to do all that you can to protect the wetland, the stream, and the wildlife from the massive assault on their integrity which are the likely outcomes of the DEC's lax standards for the granting of mining permits.

>>

>> Thank you for your anticipated attention to these matters.

>>

>> Yours truly,

>>

>> Dr. V. M. Fichera (PhD)

>>

>>

>> On Wed, Jun 24, 2015 at 3:08 PM, Crawford, Margaret A LRB

<Margaret.A.Crawford@usace.army.mil<mailto:Margaret.A.Crawford@usace.army.mil><mailto:Margaret.A.Crawford@usace.army.mil>> wrote:

>>

>>

>> Classification: UNCLASSIFIED

>> Caveats: NONE

>>

>> Hi Dr. Fichera,

>> Thank you for your e-mail. I think that it would be easier to discuss this with you over the phone. Can you provide me with your phone number, or call me at the number below? I will be in our Buffalo office for the next couple of days. I will be at my desk until approximately 4pm today. Otherwise, I will be back in the office on Monday.

>> Thank you,

>>

>> Maggie

>>

>> Margaret Crawford, Biologist

>> U.S. Army Corps of Engineers, Buffalo District

>> Regulatory Branch, Auburn Field Office

>> 7413 County House Road

>> Auburn, New York 13021

>> 315/704-0256<tel:315%2F704-0256> <tel:315%2F704-0256>

>>
margaret.a.crawford@usace.army.mil<mailto:margaret.a.crawford@usace.army.mil><mailto:margaret.a.crawford@usace.army.mil>
>> <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>
>>
>> -----Original Message-----
>> From: Robinson, Judy A LRB
>> Sent: Wednesday, June 24, 2015 2:50 PM
>> To: Crawford, Margaret A LRB
>> Subject: FW: [EXTERNAL] Clarifications needed: 13181 Sanford Road, Martville
>> NY Army Corps site visit (UNCLASSIFIED)
>>
>> Classification: UNCLASSIFIED
>> Caveats: NONE
>>
>> FYI
>>
>>
>> Judy A. Robinson, MS
>> Biologist
>> U.S. Army Corps of Engineers
>> Auburn Field Office
>> 7413 County House Road
>> Auburn, New York 13021
>>
judy.a.robinson@usace.army.mil<mailto:judy.a.robinson@usace.army.mil><mailto:judy.a.robinson@usace.army.mil>
>>
>> Buffalo District website: <http://www.lrb.usace.army.mil>
>> Regulatory Website <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>
>>
>> 315-704-0255<tel:315-704-0255> (Phone)
>> 315-255-1492<tel:315-255-1492> (FAX)
>>
>> -----Original Message-----
>> From: V. Fichera [mailto:vmfichera@gmail.com<mailto:vmfichera@gmail.com>]
>> Sent: Wednesday, June 24, 2015 2:03 AM
>> To: Robinson, Judy A LRB
>> Cc: Niver, Robyn; Sandra Doran
>> Subject: [EXTERNAL] Clarifications needed: 13181 Sanford Road, Martville NY
>> Army Corps site visit
>>
>> Dear Army Corps Member Ms. Judy Robinson:
>>
>> On June 4, 2015, you phoned me to tell me that Mr. Christopher Ferlito would
>> be receiving a warning letter from the Army Corps and that he would be advised
>> to delineate the wetland on his property and that there would be penalties if
>> there were any fill in regulated waters.
>>
>> On June 23, 2015, at a meeting of the Town of Sterling Planning Board, Mr.
>> Ferlito asserted that on June 12, 2015, a member of the Army Corps named
>> "Maggie" accompanied several DEC mining staff as well as Mr. Ferlito, his
>> attorney and one or more Town officials to the LOM site. Mr. Ferlito related

>> that "Maggie" said there is no Federal wetland there on the Sterling Creek --

>> contrary to the maps available from the National Fish and Wildlife Service and

>> the DEC, as well, which so indicate. I asked if there had been a formal

>> delineation and apparently, contrary to what you stated the letter would say,

>> "Maggie" reportedly said no delineation is necessary. Apparently, "Maggie"

>> effectively rescinded the warning letter (if it has indeed been sent).

>>

>> She did note that part of the questionable practices that the DEC had blessed

>> with a "Negative Determination" (and what I was the first and only person to

>> have complained of to both the DEC and the Corps) was indeed problematic:

>> namely the authorization to bury fill on the slope into the waters of the

>> Sterling Creek -- now declared by "Maggie" (according to Mr. Ferlito) to have

>> no wetland.

>>

>> Has the wetland been buried with fill, one wonders, so that the damage was

>> done already? How would "Maggie" document or determine that? Does the Army

>> Corps actually care?

>>

>> I learned from Mr. Ferlito that the land above this slope was cleared in part

>> by the previous owner in summer 2014 and then Mr. Ferlito cleared the

>> remainder of that section in fall 2014 -- stump grinding and all -- no concern

>> for the Indiana myotis bat, apparently, no concern for the misrepresentations

>> of that site (deemed archeologically "sensitive" on the state register) as

>> "wooded" throughout the permit application. No need to be concerned about fill

>> in the Sterling Creek from heavy snows and heavy rains this spring and summer

>> because, with no before and after photos, "Maggie", said he, declared there is

>> no fill in the Sterling Creek.

>>

>> Unfortunately, the number of inaccurate statements in Mr. Ferlito's permit

>> application to the DEC required fifteen pages to begin to delineate in my

>> comments alone, so I cannot be sure of the veracity of anything he reported.

>> The applicant and the DEC made no evaluation of the possible effects on

>> neighboring wells of using a well on the property for major operations at the

>> mining site, for example -- even though one resident reported a well drying up

>> three years ago with no mining operation present. If I appear to digress,

>> consider this: the DEC didn't notice that one of its own registered wetlands

>> was "missing" on the Hannibal Harris Hill Road mine permit application to

>> which it had given its usual rubber-stamp "Negative Declaration. A resident,

>> just like me, discovered the "missing" wetland in the moving papers and cried

>> foul. Therefore I am writing to you for clarification: Has a member of the

>> Army Corps also "missed" a Federal wetland?

>>

>> I will want a copy of the "warning letter" that was reportedly being sent to

>> Mr. Ferlito and I will want to see the full report of the visit of "Maggie" to

>> 13181 Sanford Road in Martville. Did "Maggie" actually visit the cleared area

>> of the site at the top of the steep slope? And what is her documented basis

>> for declaring there is no wetland on the Sterling Creek in that vicinity? I

>> can see the wetland flora from the road as it heads in the direction of that

>> slope.

>>

>> I will need full documentation of these startling reassurances given to Mr.

>> Ferlito and the DEC which contradict the NFWs maps and information to the

>> public. It is difficult for the NFWS to help protect the fish and turtles,
>> etc. in the stream if the Army Corps declares wetlands to be non-existent
>> without formal delineation. Again, I say "if" because, of course, this is Mr.
>> Ferlito's version of the story.
>>
>> I left you a voicemail earlier in the day on June 23, 2015 about my concerns
>> for fill because a certified forester had informed me that, in general, land
>> of the size of ten acres on a slanted steep slope can indeed produce run-off,
>> generally for the first year until heavier vegetation can set in. I am not
>> asking the Army Corps to regulate run-off -- I am asking it to actually care
>> about fill and/or the potential for fill in what I am sure are regulated
>> waters, Mr. Ferlito and his perhaps fictitious "Maggie" notwithstanding.
>>
>> Thank you for your anticipated assistance in addressing all of the above
>> issues. I look forward to your reply.
>>
>> Yours truly,
>>
>> Dr. V. M. Fichera (PhD)
>>
>> cc: Ms. Sandra Doran, Dr. Robyn Niver (NFWS)
>>
>> Classification: UNCLASSIFIED
>> Caveats: NONE
>>
>>
>>
>>
>> Classification: UNCLASSIFIED
>> Caveats: NONE
>>
>>
>>
>>
>>
>>
>> Classification: UNCLASSIFIED
>> Caveats: NONE
>>
>>
>>
>> <7-3546-00040 Christopher Construction Map.pdf>